

CHAPTER II

GENERAL EXPLANATIONS

6. Definitions in the Code to be understood subject to exceptions —

Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "**General Exceptions**", though these exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations

(a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement for he was bound by law to apprehend Z and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

7. Sense of expression once explained —

Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

8. Gender —

The pronoun "he" and its derivatives are used of any person, whether male or female.

9. Number —

Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

10. "Man", "Woman" —

The word "**man**" denotes a male human being of any age; the word "**woman**" denotes a female human being of any age.

11. "Person"—

The word "**person**" includes any Company or Association or body of persons, whether incorporated or not.

12. "Public" —

The word "**public**" includes any class of the public or any community.

13. "Queen" —

Rep. by the A.O. 1950.

14. "Servant of Government" —

The words "**servant of Government**" denote any officer or servant continued, appointed or employed in India or under the authority of Government.

15. "British India" —

Rep. by the A.O. 1937.

16. "Government of India" —

Rep. by the A.O. 1937.

17. "Government" —

The word "**Government**" denotes the Central Government or the Government of a State.

18. "India" —

"**India**" means the territory of India excluding the State of Jammu and Kashmir.

19. "Judge" —

The word "**Judge**" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal

proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which is confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations

- (a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.
- (b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.
- (c) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.
- (d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another court, is not a Judge.

20. "Court of Justice" —

The words "**Court of Justice**" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. "Public Servant" —

The words "**public servant**" denote a person falling under any of the descriptions hereinafter following; namely: —

Second — Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third — Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth — Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth — Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth — Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh — Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth — Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth — Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government ;

Tenth — Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh — Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth — Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Illustration

A Municipal Commissioner is a public servant.

Explanation 1 — Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2 — Wherever the words "**public servant**" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3 — The word "**election**" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

STATE AMENDMENT

State of Rajasthan:

In section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860), in its application to the State of Rajasthan, after clause twelfth, the following new clause shall be added, namely: —

"Thirteenth — Every person employed or engaged by any public body in the conduct and supervision of any examination recognised or approved under any law.

Explanation —The expression '**Public Body**' includes—

(a) a University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the Constitution of India or constituted by the Government; and

(b) a local authority."

Vide Rajasthan Act, 1993 4 of 1993, sec.2 (w.e.f. 11-2-1993).

22. "Movable property" —

The words "**movable property**" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

23. "Wrongful gain" —

"Wrongful gain" is gain by unlawful means of property, which the person gaining is not legally entitled.

"Wrongful loss" —

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully —

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property.

24. "Dishonestly" —

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "**dishonestly**".

25. "Fraudulently" —

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

26. "Reason to believe" —

A person is said to have "**reason to believe**" a thing, if he has sufficient cause to believe that thing but not otherwise.

27. Property in possession of wife, clerk or servant —

When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation — A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. "Counterfeit" —

A person is said to "**counterfeit**" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1 — It is not essential to counterfeiting that the imitation should be exact.

Explanation 2 — When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

29. "Document" —

The word "**document**" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1 — It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

Explanation 2 — Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

30. "Valuable security" —

The words "**valuable security**" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

COMMENTS

The certificates which are found as forged for being admitted in the college could be described as valuable security; *Kansaheb Kalu Patil v. State of Maharashtra*, AIR 1981 SC 80: 1980 Cr LJ 1312.

31. "A will" —

The words "a will" denote any testamentary document.

32. Words referring to acts include illegal omissions —

In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

33. "Act", "Omission" —

The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well as series of omissions as a single omission.

34. Acts done by several persons in furtherance of common intention —

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

COMMENTS

(i) When an offence is sought to be proved only on circumstantial evidence, the allegations of common intention under section 34 of the Indian Penal Code normally cannot be established in absence of meeting of mind, the overt act of the accused, by their conduct, by using the weapons by their utterance of words; *Santosh Desai v. State of Goa*, (1997) 2 Crimes 666 (Bom).

(ii) If some act is done by the accused person in furtherance of common intention of his co-accused, he is equally liable like his co-accused; *State of Punjab v. Fauja Singh*, (1997) 3 Crimes 170 (P & H).

(iii) In order to convict a person vicariously liable under section 34 or section 149 it is not necessary to prove that each and everyone of them had indulged in overt acts; *Ram Bhas Singh v. State of Bihar*, (1989) Cr LJ 1782 : AIR 1989 SC 1593.

(iv) When the accused rushed with sword drawn itself showed that he shared the common intention hence liable for conviction under section 300, read with section 34; *Abdulla Kunhi v. The State of Kerala*, (1990) SC Cr 525.

(v) Both sections 149 and 34 deal with a combination of persons who become liable to be punished as sharers in the commission of offences. The non-applicability of section is, therefore, no bar in convicting the accused under substantive section read with section 34 if the evidence discloses commission of an offence in furtherance of the common intention of them all; *Nethala Pothuraju v. State of Andhra Pradesh*, (1991) Cr LJ 3133 (SC).

(vi) Mere surrender by appellant alongwith accused before police does not show meeting of minds as to bring the case within ambit of section 34; *Rangaswami v. State of Tamil Nadu*, (1989) Cr LJ 875: AIR 1989 SC 1137.

(vii) In order to bring a case under section 34 it is not necessary that there must be a prior conspiracy or pre-meditation, the common intention can be formed in the course of occurrence; *Hari Om v. State of Uttar Pradesh*, 1993(1) Crimes 294 (SC).

35. When such an act is criminal by reason of its being done with a criminal knowledge or intention —

Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Effect caused partly by act and partly by omission —

Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

37. Co-operation by doing one of several acts constituting an offence —

When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose, Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food in consequence of which Z is much reduced in

strength, but the starvation is not sufficient to cause his death. *A* is dismissed from his office, and *B* succeeds him. *B*, without collusion or co-operation with *A*, illegally omits to supply *Z* with food, knowing that he is likely thereby to cause *Z*'s death. *Z* dies of hunger. *B* is guilty of murder, but, as *A* did not co-operate with *B*. *A* is guilty only of an attempt to commit murder.

38. Persons concerned in criminal act may be guilty of different offences —

Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration

A attacks *Z* under such circumstances of grave provocation that his killing of *Z* would be only culpable homicide not amounting to murder *B*, having ill-will towards *Z* and intending to kill him, and not having been subject to the provocation, assists *A* in killing *Z*. Here, though *A* and *B* are both engaged in causing *Z*'s death, *B* is guilty of murder, and *A* is guilty only of culpable homicide.

39. "Voluntarily" —

A person is said to cause an effect "**voluntarily**" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, *A* may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40. "Offence" —

Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "**offence**" denotes a thing made punishable by this Code.

In Chapter IV, Chapter VA and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the words "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

41. "Special law" —

A **"special law"** is a law applicable to a particular subject.

42. "Local law" —

A **"local law"** is a law applicable only to a particular part of India.

43. "Illegal", "Legally bound to do" —

The word **"illegal"** is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be **"legally bound to do"** whatever it is illegal in him to omit.

44. "Injury" —

The word **"injury"** denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

45. "Life" —

The word **"life"** denotes the life of a human being, unless the contrary appears from the context.

46. "Death" —

The word **"death"** denotes the death of a human being, unless the contrary appears from the context.

47. "Animal" —

The word **"animal"** denotes any living creature, other than a human being.

48. "Vessel" —

The word **"vessel"** denotes anything made for the conveyance by water of human beings or of property.

49. "Year", "Month" —

Wherever the word "**year**" or the word "**month**" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

50. "Section" —

The word "**section**" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

51. "Oath" —

The word "**oath**" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

52. "Good faith" —

Nothing is said to be done or believed in "**good faith**" which is done or believed without due care and attention.

52A. "Harbour" —

Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "**harbour**" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.